

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

FILED

APR 02 2014

Clerk, U.S. District Court
District Of Montana
Missoula

ARVIN B. RED STAR,

Plaintiff,

vs.

KENNY TROTTIER, MARCIA
GOODSEPT-HURD, SEAN REDBOY
and SIMON GOLOB, et al.,

Defendants.

CV 13-97-GF-DWM-RKS

ORDER

Arvin B. Red Star is a federal prisoner proceeding pro se. He alleges Defendants violated his civil rights during his federal criminal proceeding by wrongfully choosing to prosecute him, failing to secure a proper indictment, failing to prove his guilt beyond a reasonable doubt, and miscalculating the sentencing guidelines. Magistrate Judge Keith Strong recommends the Court dismiss Red Star's Complaint. (Doc. 6.)

Red Star has not filed objections to Judge Strong's Findings and Recommendations. The Court reviews the findings and recommendations that are not specifically objected to for clear error. *McDonnell Douglas Corp. v.*

Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

The Court finds no clear error with Judge Strong’s determination that Red Star’s claims are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994), which prevents challenges to the validity of a conviction or sentence if that conviction or sentence has not been reversed, declared invalid, expunged, or called into question.

Accordingly, IT IS ORDERED that the Findings and Recommendations (Doc. 6) are ADOPTED IN FULL. Red Star’s Complaint (Doc. 2) is DISMISSED.

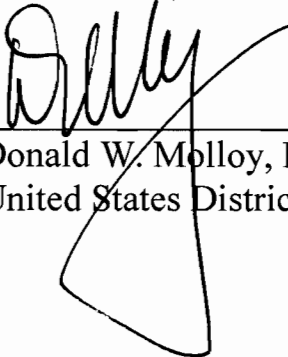
IT IS FURTHER ORDERED that the Clerk of Court is directed to close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

IT IS FURTHER ORDERED that the Clerk of Court is directed to have the docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g). Red Star failed to state a claim upon which relief may be granted.

IT IS FURTHER ORDERED that the Clerk of Court is directed to have the

docket reflect that the Court certifies pursuant to Fed. R. App. P. 24(a)(3)(A) that any appeal of this decision would not be taken in good faith. The record makes plain the instant Complaint is frivolous and lacks arguable substance in law or fact.

Dated this 2nd day of April, 2014.



Donald W. Molloy, District Judge
United States District Court